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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

18 CR 834 (PAE)

5 DANIEL HERNANDEZ,

6 Defendant.

7 -----x

8 New York, N.Y.

9 March 28, 2019

3:00 p.m.

10 Before:

11 HON. PAUL A. ENGELMAYER,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the
17 Southern District of New York

BY: JACOB E. WARREN

18 Assistant United States Attorney

19 DAWN M. FLORIO

LANCE LAZZARO

20 Attorneys for Defendant

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1 (Case called)

2 MR. WARREN: Good afternoon, your Honor.

3 Jacob Warren on behalf of the United States.

4 THE COURT: Good afternoon, Mr. Warren.

5 MS. FLORIO: Good afternoon, your Honor.

6 Dawn Florio of the Dawn Florio Law Firm representing
7 Mr. Daniel Hernandez.

8 MR. LAZZARO: Good afternoon, your Honor.

9 Lance Lazzaro for Mr. Hernandez.

10 THE COURT: Very good. Good afternoon, Ms. Florio.

11 Good afternoon, Mr. Lazzaro.

12 Good afternoon to you, Mr. Hernandez.

13 You may all be seated.

14 Ms. Florio, I gather you may be more comfortable
15 standing?

16 MS. FLORIO: Actually, sitting is better.

17 THE COURT: That's fine as well.

18 Good afternoon as well to the members of the public
19 who are here.

20 All right. We are here today so that the court can
21 conduct a Curcio hearing with respect to Defendant Daniel
22 Hernandez. The specific issue is whether Mr. Hernandez is
23 prepared to make and whether he can make a knowing and informed
24 waiver of any potential conflict presented by his
25 representation by Mr. Lazzaro.

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1 For the benefit of all here, I am going to briefly
2 describe what this issue is and how it came about. I don't
3 intend to review here the full history of the issue. Those
4 interested can consult the transcript of the docket, including
5 of the pretrial conference at which the issue first arose and
6 the various court orders and the filings that have ensued.

7 Briefly, though, Mr. Hernandez was initially
8 represented jointly by Mr. Lazzaro and by Ms. Florio. At an
9 early conference, it came to light that Mr. Lazzaro previously
10 had represented not one, but two of Mr. Hernandez's
11 codefendants in this case, in both of those instances in
12 criminal cases in state court.

13 These defendants were a Kifano Jordan and Faheem
14 Walter. This fact came to light not because the court had
15 been alerted by Mr. Lazzaro to the fact of those prior
16 representations, rather Mr. Lazzaro's prior representation of
17 Mr. Jordan came to light in the course of a Curcio that had
18 been convened with respect to a separate conflict issue
19 involving Mr. Jordan's counsel, an issue which those counsel
20 had affirmatively brought to my attention. My followup
21 questions then brought to light the fact that Mr. Lazzaro had
22 had a previously undisclosed representation of another
23 codefendant, Mr. Walter.

24 At that point, the court understood Mr. Lazzaro to
25 stand down from participating in this case, from representing

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1 Mr. Hernandez in this case, until the potential conflict issues
2 had been sorted out. Ms. Florio since then has been sole
3 counsel for Mr. Hernandez. That was including in connection
4 with Mr. Hernandez's guilty plea on January 23, 2019,
5 opportunity to a plea agreement that included a cooperation
6 provision.

7 On February 21, 2019, after the issuance of a
8 superseding indictment and an arrest pursuant to it, the
9 transcript of Mr. Hernandez's guilty plea was unsealed. In
10 the ensuing two months, the court has taken several steps to
11 ensure that the interest of all three potentially effect and
12 defendants -- Mr. Hernandez, Mr. Jordan, and Mr. Walter -- are
13 protected.

14 Both Mr. Jordan and Mr. Walter initially moved to
15 dismiss the superseding indictment on the theory that it
16 might have been tainted in some way by information provided
17 by Mr. Hernandez that derived from Mr. Lazzaro's earlier
18 representations of Mr. Jordan and/or Mr. Walter.

19 The court considered that motion, including by means
20 of reviewing the government's submissions regarding the
21 circumstances leading it the superseding indictment. The court
22 ultimately denied that motion as baseless.

23 The court later gave Mr. Jordan and Mr. Walter the
24 opportunity to move to disqualify Mr. Lazzaro from representing
25 Mr. Hernandez. Neither of them did so. The court also took

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1 steps to enable it independently to determine whether
2 Mr. Lazzaro's representation of Mr. Hernandez in this case
3 jeopardized the interests of Mr. Lazzaro's former clients,
4 Mr. Jordan and Mr. Walter. The court directed Mr. Lazzaro to
5 submit a lengthy declaration recounting in detail the nature
6 and circumstances of those prior representations and to attach
7 any records that he retained reflecting privileged
8 communications with either of those former clients.
9 Mr. Lazzaro promptly did so.

10 Upon review of those submissions, the court determined
11 that the subject matter of Mr. Lazzaro's prior representations
12 were not factually connected to the present case, which
13 involves racketeering and other charges relating to an entity
14 that, as alleged, is called the Nine Trey Gangsta Bloods.

15 The court also determined that Mr. Lazzaro, based on
16 his submissions, is not privy to any privileged communications
17 of either of his prior clients that could be relevant here.

18 So that brings us to today. On March 22, I issued an
19 order stating we are now down to a single issue that must be
20 resolved before Mr. Lazzaro may resume his representation of
21 Mr. Hernandez. The remaining issue solely concerns the
22 interests of Mr. Hernandez, as they may be affected and were to
23 be represented by a lawyer, Mr. Lazzaro, who previously
24 represented two people who are now codefendants of his in this
25 case.

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1 I should add, by way of factual update, that earlier
2 this morning, Mr. Jordan pled guilty before this court to two
3 firearms charges. The case against him will now proceed to
4 sentencing. That does not eliminate the potential conflict, of
5 course, but it narrows, at least as to Mr. Jordan, the context
6 in which Mr. Hernandez might be in a position to give adverse
7 testimony that could theoretically be affected by the counsel
8 and advice of Mr. Lazzaro.

9 With that long preface, which hopefully is clarifying
10 for all concerned, I propose to proceed in this order, and I
11 don't expect the hearing to take long.

12 I will first want to understand from Ms. Florio, the
13 non-conflicted counsel for Mr. Hernandez, what discussions she
14 has had with Mr. Hernandez to assure that he is educated about
15 the conflict at issue. I want to understand essentially the
16 amount of time that you've taken with him and the ways in which
17 you've gone about educating him as to what the issue is. The
18 reason, of course, is that under Curcio, a court is to extend
19 to the defendant an opportunity to confer about a potential
20 conflict issue with a non-conflicted lawyer.

21 Ms. Florio, we have had the good fortune, you've
22 already been in the case and are well familiar with the
23 circumstances. You were the obvious person to appoint to guide
24 Mr. Hernandez on that issue. It's my hope that if the hearing
25 goes as counsel have indicated they expect it to, Mr. Hernandez

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1 may indicate that he is satisfied with your independent counsel
2 on that issue, which in turn might obviate a need for a second
3 hearing to allow time for that sort of consultation.

4 In any event, after I speak with Ms. Florio, I will
5 then have Mr. Smallman swear Mr. Hernandez, and I will then
6 question Mr. Hernandez substantially along the lines of the
7 proposed colloquy that the government has filed, but with some
8 additional questions. And the goal of that questioning will be
9 to make sure, Mr. Hernandez, that you understand the potential
10 ways -- potential emphasized here -- the potential ways in
11 which your representation by Mr. Lazzaro could potentially be
12 adversely affected because of the fact of Mr. Lazzaro's
13 previous representation of the two codefendants of yours.

14 With that, over to you, Ms. Florio. Just can you tell
15 me what communications -- thank you, Mr. Hernandez -- that you
16 have had with Mr. Hernandez by way of walking him through the
17 conflict thinking?

18 MS. FLORIO: As soon as the conflict issue had arisen,
19 I met many times with Mr. Hernandez, just me and him by
20 ourselves, and I explained what the conflict -- what the
21 potential conflicts could be, what his options are.

22 I specifically had indicated to him, for example, if
23 he wouldn't -- this is if he wouldn't have pled guilty and
24 everyone would have gone to trial -- that anything that
25 Mr. Lazzaro had learned during his representation of Mr. Jordan

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1 and Mr. Walter, that that could not be used to cross-examine
2 Mr. Kifano, Mr. Kifano Jordan and Mr. Walter.

3 So he understood that. He accepted that. He waived
4 any potential, you know, conflict with respect to that
5 particular issue. We have exhausted all the other issues of
6 the potential conflicts in this case. He understands
7 everything with respect to what is happening here today. He
8 has asked me many questions, I've answered all of his
9 questions, and we have gone over all the proposed questions
10 from the government, which he understands, and he's prepared
11 to answer truthfully all of your Honor's questions.

12 THE COURT: Approximately how many times have you met
13 or spoken with Mr. Hernandez about the conflict issue?

14 MS. FLORIO: About six.

15 THE COURT: Most recently when?

16 MS. FLORIO: Today.

17 THE COURT: Are you confident that he understands the
18 nature of the conflict issues presented?

19 MS. FLORIO: I am super confident.

20 THE COURT: That is good to hear.

21 Let me identify an area or two just to make sure that
22 you recall going over it with him.

23 The government identifies in its proposed examination
24 this possibility, which is that Mr. Lazzaro might have some
25 information that he's obtained from Mr. Jordan or from

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1 Mr. Walter that could be helpful to Mr. Hernandez at some point
2 in this representation, but that he would be prohibited from
3 using that information because he owes a duty of
4 confidentiality to his former clients.

5 Is that one of the potential conflicts you have gone
6 over?

7 MS. FLORIO: Absolutely.

8 THE COURT: Look, I'll identify another one, which is
9 as follows: It is obviously a public fact that Mr. Hernandez
10 is party to a cooperation agreement. One possibility is that
11 to the extent Mr. Lazzaro feels an ongoing duty or sense of
12 obligation to his former client, it is at least theoretically
13 possible that Mr. Lazzaro's guidance to Mr. Hernandez about
14 what to share with the government and how to share it and how
15 to put it could be affected by the way it would make
16 Mr. Lazzaro's former clients.

17 Look, of course I'm not suggesting that Mr. Lazzaro
18 would, in any way, shirk on his obligations to Mr. Hernandez,
19 but if he ever felt in some way that there was a tension of
20 conflict between the interests of his former clients and the
21 interest of his present ones, that is the purpose of the Curcio
22 inquiry. It could lead a lawyer in that position to steer the
23 client not to say as damaging things about the codefendants as
24 the facts might warrant. That is a theoretical possibility.

25 Is that a scenario you've gone over?

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1 MS. FLORIO: We have gone over that as well.

2 THE COURT: Have you gone over with Mr. Hernandez this
3 scenario, which is that if, in theory, a conflicted lawyer
4 steered him or led him or encouraged him to provide less than
5 fully truthful information to the government, that could
6 jeopardize his ongoing cooperation relationship, it could lead
7 the government to reconsider it?

8 MS. FLORIO: We have discussed that, your Honor.

9 THE COURT: Are you confident that Mr. Hernandez is
10 fully aware and understands those potential risks?

11 MS. FLORIO: I'm super confident.

12 THE COURT: Look, I want to make clear that in
13 identifying these risks, these do not in any way, shape, or
14 form bear on Mr. Lazzaro. Whoever was party to the prior
15 representation, I would be asking exactly the same questions.
16 The important thing is that the client understand that,
17 regardless of the character, nature of the person, of the
18 lawyer involved, those are risks that are inherent in the
19 situation Mr. Hernandez proposes to be in, which is to say
20 having a lawyer who previously represented people against whom
21 Mr. Hernandez is potentially positioned to cooperate.

22 MS. FLORIO: Thank you.

23 THE COURT: Very good.

24 Ms. Florio, anything further you want to share with me
25 about your discussions with Mr. Hernandez about the Curcio

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1 issue?

2 MS. FLORIO: Your Honor, all I can tell you is that we
3 have extensively exhausted every possibility. I've met with
4 him numerous occasions, and actually, I was present with most
5 of the proffer agreements and I've been with Mr. Hernandez from
6 the very beginning, and we have spoken privately about this
7 issue and he is ready to proceed.

8 THE COURT: All right. Thank you.

9 Let me thank you, while I have you, for the service
10 you provided as sole counsel to Mr. Hernandez during the two
11 plus months in which you've been acting alone.

12 MS. FLORIO: Thank you.

13 THE COURT: With that, I'm going to have Mr. Smallman,
14 please swear Mr. Hernandez.

15 Mr. Hernandez, would you please rise.

16 (Defendant sworn)

17 THE COURT: Mr. Hernandez, you may be seated. Just
18 kindly move the microphone close to Mr. Hernandez.

19 Mr. Hernandez, I am going to ask you just a few
20 background questions. The purposes of these questions is to
21 solely make sure that I can satisfy myself that you understand
22 what is going on here today and that there is nothing
23 interfering with your ability to understand.

24 All right. I've asked you a few of these at a prior
25 proceeding. I'm just going to start right from the top.

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1 How old are you?

2 THE DEFENDANT: 22, your Honor.

3 THE COURT: All right. The last education you've
4 received is?

5 THE DEFENDANT: GED.

6 THE COURT: GED.

7 What was the last year in which you attended school?

8 THE DEFENDANT: I believe the eleventh grade.

9 THE COURT: Where was that?

10 THE DEFENDANT: Legacy High School.

11 THE COURT: When did you get the GED?

12 THE DEFENDANT: I received it, I believe, April 10 of
13 2018.

14 THE COURT: All right. Thank you.

15 Are you currently taking any medications?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: All right. Are you currently under the
18 care of a doctor or a psychiatrist?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: In the past 24 hours, have you taken any
21 alcohol, medications, drugs of any form?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: All right. Is there anything today that
24 is interfering with your ability to understand what is
25 happening here today?

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1 THE DEFENDANT: No, your Honor.

2 THE COURT: All right. I was watching you while I was
3 speaking to Ms. Florio and you seemed very alert and locked in
4 on what she and I were saying to each other.

5 Were you able to understand that conversation?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand what the purpose is of
8 today's proceeding?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Ms. Florio, do you have any doubt as to
11 your client's competence to engage in a Curcio inquiry today?

12 MS. FLORIO: I have no doubt.

13 THE COURT: Government, how about you?

14 MR. WARREN: No, your Honor. Thank you.

15 THE COURT: All right. Mr. Hernandez, I'm now going
16 to pivot to asking you questions about the role of Mr. Lazzaro.

17 If at any point you want to confer with Ms. Florio,
18 feel free to do so.

19 THE DEFENDANT: OK.

20 THE COURT: First of all, I'm aware that Mr. Lazzaro
21 represented you in this case up to the point when I ordered him
22 to step aside.

23 Focusing on that period up to the point where I asked
24 him to step aside, were you satisfied with the services that he
25 provided to you up to that point?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: All right. Has Mr. Lazzaro informed you
3 that he previously represented your codefendants -- Kifano
4 Jordan and Faheem Walter -- in prior state court criminal
5 proceedings?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: And at what point did he inform you of
8 that?

9 THE DEFENDANT: Mr. Jordan was the one who referred me
10 to Mr. Lazzaro for a state case that I had.

11 THE COURT: I see.

12 So on account of Mr. Jordan's referring you, you
13 understood that Mr. Jordan had used Mr. Lazzaro as a lawyer
14 before?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: All right. When did you become aware that
17 Mr. Lazzaro had represented Mr. Walter before?

18 THE DEFENDANT: Um, about -- um, October, um -- I
19 think -- I don't know if it was October or November of 2018.

20 THE COURT: So the fall?

21 THE DEFENDANT: In or about.

22 THE COURT: In the fall, you became aware of that
23 prior representation?

24 THE DEFENDANT: Yes, before I was arrested for this
25 crime.

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1 THE COURT: How did that come up?

2 THE DEFENDANT: I guess Mr. Lazzaro made an appearance
3 for Mr. Walter, it was like a one -- one-time thing.

4 THE COURT: Unrelated to this case?

5 THE DEFENDANT: Yes. Yes, your Honor.

6 THE COURT: All right. You were aware at that time of
7 Mr. Lazzaro's representation of Mr. Walter?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: All right. Do you understand that the
10 fact that Mr. Lazzaro previously represented Mr. Jordan and
11 Mr. Walter and likely had conversations with them that are
12 likely covered by attorney-client privilege?

13 Do you understand that that could lead him to have
14 divided loyalties between yourself and those two former clients
15 of his, do you understand that that is a possibility?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: All right. I want to identify for you,
18 along the lines of the conversation I had with Ms. Florio, a
19 couple of examples of ways in which Mr. Lazzaro's prior
20 representation of those two people or his privileged
21 conversations with them might adversely affect his
22 representation of you or might limit the things he can do on
23 your behalf.

24 First of all, are you aware that it is possible that
25 Mr. Lazzaro has information from Mr. Jordan or Mr. Walter that

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1 might be helpful in representing you in this case, but that he
2 is prohibited from using that information because of his duties
3 of confidentiality to those former clients?

4 Do you understand that?

5 THE DEFENDANT: Yes, your Honor, I do.

6 THE COURT: Are you aware that Mr. Lazzaro, on account
7 of his prior representations of Mr. Jordan and Mr. Walter,
8 might give you advice that is different from the advice he
9 otherwise might have?

10 Do you understand that is a possibility?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you understand, for example, that it is
13 possible that an attorney in Mr. Lazzaro's position might
14 discourage you in the course of your cooperation from fully
15 disclosing all the incriminating information you have regarding
16 those former clients of his?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Again, I'm not saying this to impugn
19 Mr. Lazzaro. Anybody in this situation, I would be asking the
20 exact same questions about.

21 You understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: All right. Let me ask you now, I put
24 questions to you. I'm sorry, one more question.

25 Do you understand that if Mr. Lazzaro were to lead you

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1 to not tell the truth in your meetings with the government,
2 that could then subject you to consequences, including the
3 potential termination of your cooperation with the government,
4 cooperation agreement with the government?

5 THE DEFENDANT: Yes, your Honor. I understand.

6 THE COURT: All right. Now, let me turn the floor to
7 you.

8 Part of the purpose of this Curcio proceeding is for a
9 judge to make sure that the defendant understands the nature of
10 the conflict. I have reviewed the ones that the government
11 thought of, the ones I was able to think of with you.

12 I would like you now to tell me in your own words what
13 your understanding is of the potential conflict of interest
14 presented by this situation.

15 THE DEFENDANT: OK. Um, your Honor -- um, I don't see
16 any potential conflict in this situation because Mr. Lazzaro
17 never told me any confidential information from Mr. Jordan or
18 Mr. Walter, and from my understanding is that Mr. Jordan
19 pleaded guilty this morning. I pleaded guilty January 23.

20 THE COURT: Look, Mr. Hernandez, first of all,
21 Mr. Walter has not pled guilty.

22 THE DEFENDANT: I'm sorry, Mr. Jordan. Sorry.

23 THE COURT: No, no. You said it right. But, look,
24 the point is, I'm asking you not whether there is, in fact,
25 going to be any compromise in the ability of Mr. Lazzaro, in

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1 the work that Mr. Lazzaro does on your behalf if permitted to
2 represent you. I'm asking you if there is a potential
3 conflict. I need to understand that you understand the
4 potential conflict. I appreciate you have confidence in
5 Mr. Lazzaro. That is not the issue here.

6 THE DEFENDANT: No, I do understand.

7 THE COURT: Please, if you need to take a moment with
8 Ms. Florio, please do so, but the question I'm asking for you
9 is, I need to make sure you get it. I need to make sure that
10 you understand what, in theory, the risk you're taking on is by
11 being represented by somebody who represents two codefendants,
12 and I need to make sure you're able to articulate this in your
13 own words.

14 THE DEFENDANT: OK. Can I get a second?

15 THE COURT: Do you want to take a moment with
16 Ms. Florio?

17 THE DEFENDANT: Yes.

18 THE COURT: Go ahead.

19 (Defendant conferring with counsel)

20 THE DEFENDANT: Um, I understand the conflict in the
21 situation I'm in, knowing that if Mr. Lazzaro told me to
22 withhold any information or provide any information about
23 Mr. Walter or Mr. Jordan. I know that could be a conflict with
24 any of the proffers I did with the government. My cooperation
25 agreement could be terminated, and there was nothing

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1 Mr. Lazzaro could tell me that would benefit any of my
2 information that I provided the government.

3 THE COURT: Look, do you understand that, in theory,
4 Mr. Lazzaro's advice to you might be affected by the fact that
5 two of the people you may be talking about are former clients
6 of his?

7 THE DEFENDANT: Yes, I understand that.

8 THE COURT: Do you understand that the advice he might
9 give you might be potentially different from what a lawyer who
10 hadn't previously represented those two people would give you?

11 THE DEFENDANT: I do understand that, your Honor.

12 THE COURT: All right. Do you understand that if that
13 led you to say something, for example, to the government that
14 was less than fully accurate or, for that matter, to testify in
15 a way that was less than fully accurate, that could have very
16 severe consequences for you?

17 THE DEFENDANT: Yes, your Honor. I understand.

18 THE COURT: Do you understand that one danger to you
19 is that none of us here can foresee all of the possible
20 conflicts that could arise because Mr. Lazzaro previously
21 represented two people who are codefendants in your case?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: In other words, we're all doing our best
24 to identify situations or scenarios that could arise, but cases
25 take funny turns, and we may all sitting here today in late

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1 March not being able to foresee where the case will be six
2 months from now. I can't foresee every way in which the
3 multiple roles Mr. Lazzaro has played in connection with
4 defendants in this indictment could ultimately hurt you, but
5 there may be things we are not thinking of or can't foresee
6 now.

7 Do you understand that?

8 THE DEFENDANT: Yes, your Honor. I understand.

9 THE COURT: Do you understand that as a defendant in a
10 criminal case, you are entitled to the assistance of an
11 attorney whose loyalty to you is undivided, who is not subject
12 to any factor that might in any way intrude upon the attorney's
13 loyalty to your interests?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: In other words, you understand that you
16 are entitled to an attorney who has only your interests in mind
17 and not the interests of any other client?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: All right. Have you received any
20 inducements or any promises or any threats with regard to your
21 choice of counsel in this case?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: Have you consulted with any attorney other
24 than Mr. Lazzaro about the dangers to you presented by this
25 potential conflict of interest?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Who is that?

3 THE DEFENDANT: Ms. Dawn Florio.

4 THE COURT: All right. How much time have you spent
5 speaking with Ms. Florio about this issue?

6 THE DEFENDANT: It was about six times. What she
7 said.

8 THE COURT: Her estimate is about right?

9 THE DEFENDANT: Yeah. There about, yeah.

10 THE COURT: Did you feel like you spent enough time
11 with her to really get to the bottom of the issues here?

12 THE DEFENDANT: Yes, I have, your Honor.

13 THE COURT: Were you satisfied with the quality of her
14 guidance to you?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: All right. You have a right under the law
17 to consult with an attorney who is free from any conflict of
18 interest about this issue, and Ms. Florio is that attorney.

19 Do you understand that if you want additional time to
20 confer with her about the issue, I will give that to you. If
21 there is anything that has happened, for example, in our
22 discussions so far today that leads you to want to pause and
23 spend more time with Ms. Florio about the issue, I will be glad
24 to give you that time.

25 Do you understand that that is available to you, if

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1 you want it?

2 THE DEFENDANT: Yes, your Honor. I do understand.

3 THE COURT: All right. I'm prepared to adjourn the
4 remainder of this proceeding so that you could continue your
5 conversation with Ms. Florio about the potential conflict of
6 interest that I've described to you today.

7 Ms. Florio, I take it you're still available to
8 Mr. Hernandez for that purpose?

9 MS. FLORIO: I am.

10 THE COURT: All right. Would you prefer to adjourn
11 so you can give additional thought to that matter, or are you
12 prepared to continue and give me as they say your final answer
13 now?

14 THE DEFENDANT: Yeah, I'll give a final answer.

15 THE COURT: All right. In other words, you feel like
16 you've given enough thought to the issue to let me know, and
17 I'm about to put the question to you, whether or not you waive
18 your right to a conflict-free counsel?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: All right. After considering all that
21 I have said today about the ways in which Mr. Lazzaro's prior
22 representation of Mr. Jordan and Mr. Walter may adversely
23 affect you in this case, do you believe that it is in your best
24 interest to continue with him alongside Ms. Florio as your
25 attorney?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that by choosing to
3 continue with Mr. Lazzaro as your attorney, you are waiving
4 your right to be represented solely by an attorney who has no
5 conflict of interest?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Are you knowingly and voluntarily waiving
8 your right to conflict-free representation?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Do you agree to waive any post-conviction
11 argument on appeal or otherwise that by virtue of Mr. Lazzaro's
12 prior representation of Mr. Jordan or Mr. Walter, you were
13 denied effective assistance of counsel by Mr. Lazzaro?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: All right. Is there anything that I have
16 said that you wish to have explained further?

17 THE DEFENDANT: No, your Honor.

18 THE COURT: Government, do you believe there are any
19 additional questions I need to put to the defendant?

20 MR. WARREN: No, your Honor. Thank you.

21 THE COURT: Ms. Florio, do you?

22 MS. FLORIO: No, your Honor.

23 THE COURT: All right. I have carefully examined
24 Mr. Hernandez on the issues at hand. I've also been very
25 attentive in watching him and listening to him and evaluating

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1 the quality of his responses. It is clear to me that he
2 understands the nature of the problem presented here. It is
3 also quite clear to me that he spent a lot of productive time
4 with Ms. Florio working through the possible angles and
5 possible issues here.

6 I find that Mr. Hernandez has knowingly and
7 voluntarily and willfully waived his right to conflict-free
8 representation. I therefore authorize Mr. Lazzaro to resume
9 representation of Mr. Hernandez.

10 It is my expectation that, Ms. Florio, you are in
11 it for the long haul and will be jointly representing
12 Mr. Hernandez throughout this case, is that correct?

13 MS. FLORIO: That is correct.

14 THE COURT: Mr. Hernandez, I'll just say the following
15 to you: You're fortunate to have not one, but two fine lawyers
16 represent you.

17 If there is any point at which a subject comes up
18 where any of the concerns that I have raised with you or any
19 other concern of a similar nature, that is to Mr. Lazzaro's
20 guidance to you could be affected by his prior representation,
21 anything like that ever comes up, one of the advantages of
22 having Ms. Florio on the team is that she does not labor under
23 any such conflict.

24 So keep in mind that this is something you should
25 continue to be mindful of. If there is ever a point you have

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1 any concern about the independence of Mr. Lazzaro's advice, you
2 should by all means take up the matter at hand independently
3 with Ms. Florio.

4 Do you understand?

5 THE DEFENDANT: Yes, your Honor, I do.

6 THE COURT: Anything further from any counsel?

7 MR. WARREN: No, your Honor.

8 MS. FLORIO: No, your Honor.

9 THE COURT: Thank you.

10 We stand adjourned.

11 (Adjourned)